IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLIATION NO.161 of 1996
IN
PERJURY NOTICE DATED 27-1-1993
IN
B.C.C.C. S.C. SUIT NO.3057 OF 1984

Shri S.L. Angchekar,
Bailiff of Sheriff of Bombay,
Old Secretariat Building, City
Civil Court, Mumbai ...Petitioner
(Org.Respondent)

V/s.

1. Omprakash Baluram Dhanuka
Sole Proprietor,
M/s.Indian Adhesive and
Chemical Industries at
Sr.No.503-504, Bombay Talkies
Compound, Malad(W),
Mumbai 400 06.

2. M/s.Vikram Industries
at Desai Wadi, Dadar(W),
Mumbai.

3. The State of Maharashtra ...Respondents
(Res.No.1 orig.Plnf.
Res.No.2 Orig.Def.)

Shri.A.C. Singh for the Petitioner/Bailiff.
Shri.U.V. Nikarm APP for the State.

CORAM : V.M. KANADE, J.
DATED : 24/11/2006

ORAL JUDGMENT:-

1. Petitioner/Bailiff is challenging the order passed by City Civil Court, Bombay dated 25th April,

1996 whereby City Civil Court Judge was pleased to record findings that the petitioner/Bailiff had committed an offence punishable U/s.193 of the IPC by filing false joint affidavit dated 8th July, 1986, therefore, further directed that the complaint be given before Learned Magistrate, Esplanade Court to take criminal action against the plaintiff as well as the petitioner/Bailiff for filing a false affidavit dated 8/7/1986.

Prosecution's case in brief is as under:-

2. Suit was filed by the plaintiff on 15/5/1984 and the application was made for attachment before judgment. On 15/5/1984 order of attachment before judgment was obtained and returnable date was given. On 8/8/1984 on the first returnable date of hearing of the suit matter was adjourned on the ground of settlement. Thereafter, settlement was adjourned from time to time. In the meantime on 01/07/1986 defendant was served and affidavit of service was filed and further order of substituted service was obtained from the court on 8/7/1986. On 8/7/1986 joint affidavit of service of the plaintiff and the petitioner/Bailiff was filed and suit was adjourned

for dismissal. Thereafter on 15/1/1987 ex-parte decree has been passed and application for attachment before judgment was discharged. Therefore, defendant filed notice of motion for setting aside ex-parte decree. The matter was made absolute in the ex-parte decree and was set aside. Thereafter on 27/1/1993 show cause notice was issued in respect of perjury by plaintiff and petitioner/Bailiff with regard to affidavit of service dated 8/7/1986. Defendant's case was that court receiver was in possession and the seal of the court receiver was fixed on the suit premises. It was submitted that therefore, affidavit which was filed by the petitioner/Bailiff and the plaintiff affixing writ of summons on the outer door of the premises was false.

3. Learned Judge, City Civil Court, Bombay after going through the records and aforesaid findings directed that the complaint be filed against plaintiff and petitioner/Bailiff. Petitioner/Bailiff has challenged the aforesaid order by way of this criminal revision application. During the intervening period or pendency of criminal revision application

plaintiff has expired and before that suit between plaintiff and defendants has been settled.

4. Learned counsel appearing on behalf of petitioner/Bailiff submitted that one of the essential ingredients of Sec.193 is that it has to be established that false statement is made intentionally by the person who is alleged to have committed perjury. He further submitted that there is no material to show that writ of summons was not pasted on the outer door of the premises in question. Only allegation is that premises was locked and key was with court receiver and therefore, substituted service could not have been effected.

5. Learned APP for the State has vehemently opposed this submission. He has invited my attention to the impugned order and pointed out that City Civil Court, Bombay gave elaborate reasons before coming to a conclusion that prima facie case is made out. In my view, submission made by learned counsel appearing on behalf of petitioner/Bailiff will have to be accepted. It is an admitted position that defendant was initially served on 1/7/1986 and affidavit of

service dated 4/7/1986 was filed. There is no allegation that affidavit was false. It is to be noted here that plaintiff obtained order of substituted service and pursuant to the said order plaintiff took petitioner/Bailiff to the premises and writ summons was pasted on the outer door of the premises. There is no allegation in the show cause notice that the plaintiff did not affix writ summons by way of substituted service on the said door. In order to constitute offence U/s.193 of IPC, it has to be established that averment made in the affidavit is false to the knowledge of the person who affirms affidavit. This fact has not been considered by the lower court and therefore, in my view impugned order is liable to be set aside. In the result criminal revision application is allowed. Impugned order dated 25th April, 1996 is quashed and set aside. Revision application is made absolute in the above terms.

V.M. KANADE J.